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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1982

THOMAS O. WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Did the United States District Court for the Southern District of West Virginia err by addressing the merits of the underlying case without first establishing jurisdiction and standing?

2. Does the United States Supreme Court possess the necessary authority under the U. S. Constitution to create jurisdiction and to grant standing to a suit to test the constitutionality of the pardon of former President Richard M. Nixon?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Thomas O. Williams, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of appeals for the Fourth Circuit entered on 22 February 1982.

OPINION BELOW

The Court of Appeals entered its decision affirming the dismissal of petitioner's suit in Federal District Court to contest the constitutionality of the presidential pardon of former President Richard M. Nixon on February 22, 1982. A copy of the decision is attached as Appendix A.

A request for rehearing was not made because no Court lower than United States Supreme Court has jurisdiction in the matter.

JURISDICTION

On February 22, 1982, The Court of Appeals for the Fourth U. S. Circuit entered judgement affirming the dismissal of petitioner's suit in Federal District Court to contest the constitutionality of the presidential pardon of former President Richard M. Nixon. The jurisdiction of this Court, for the purpose of correcting the error of the lower Court, because it lacked jurisdiction in the matter, is invoked under Title 28 United States Code, Section 1251 et seq.

Jurisdiction to hear the case concerning the constitutionality of the aforementioned pardon has yet to be established and only the United States Supreme Court can do so for the reason that there exists no precedent for the question at hand. Consequently, there is, as yet, no existing jurisdictional statute, no previous case law, nor directive from a higher court to permit any lower court to act in the matter. The original jurisdiction of this Court, emanating from the 1803 decision commonly known as Marbury v. Madison, is invoked under U. S. Constitution, Article III, section 2: "... the judicial Power shall extend to all cases in Law and Equity, arising under this Constitution, ...; to Controversaries to which the United States shall be a party; .....".

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ...; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; .....".

STATEMENT OF THE CASE

After two previously unsuccessful attempts to contest the constitutionalty of the pardon of former President Richard M. Nixon, once while living in the State of New York and once while in Maryland, petitioner, on June 26, 1980, filed a Petition for Declaratory Judgement, Temporary and Permanent Injunctive Relief, and Judicial Review in Federal District for the Southern District of West Virginia.

Subsequently, on September 23, 1981, lower Court Judge for the Southern District of West Virginia issued a Memorandum Order (see Appendix B) that:

1. Failed to address the issues of jurisdiction and standing.
2. Addressed the merits of the major underlying case.
3. Dismissed the suit.

On February 22, 1982, United States Court of Appeals for the Fourth Circuit upheld the lower Court's decision (see Appendix A). Petitioner then made no further request for rehearing because no Court lower than United States Supreme Court has jurisdiction in the matter.

From the very outset, the major problem and hurdle to overcome concerning this case has revolved about the matter of jurisdiction; that is, the necessary authority for the Courts to act in the matter. But because there is no precedent in our nation's history concerning the matter of one president pardoning another, there, consequently, are no existing statutes, no previous case law, nor directives from a higher court with which to

deal directly with the matter of jurisdiction for the case at hand. Therefore, it was necessary to look to general principles and to devise some way to get the pardon issue to the only court having constitutional authority to create jurisdiction; that is, the United States Supreme Court. Petitioner then chose the route involving the income tax, a matter that subsequently has become a moot point.

In effect, there are two cases before the Court; the one real, the other moot, which is say there is no case. As previously stated, because of the lack of precedence for the matter at hand (i. e. the presidential pardon), some means had to be devised in order to get the matter to the only court with constitutional authority to create jurisdiction.

Then, because it was real, "justiciable" (albeit in the negative), and named the United States of America as defendent (for reasons apparent here-in), petitioner chose the route of the income tax to gain entry to the Courts. In effect then, like the booster rockets to the spaceship Columbia, the matter of the tax has simply been the vehicle with which to propel the real case concerning the presidential pardon to the only court able to deal with the matter. Now that that has been achieved and because the underlying suit does not contest petitioner's obligation to pay the tax, the tax matter and all accompanying orders, directives, arguments, decisions, etc. concerning it are moot, thus

requiring no further consideration. Like the spent booster rockets, the tax matter can now fall away.

Now comes the real issue before the Court concerning the matter of the presidential pardon and the dual issues of jurisdiction and standing. Very simply, that is, does this Court, emanating from the 1803 decision commonly known as Marbury v. Madison, have the Constitutional authority necessary to grant jurisdiction in this instance to test the constitutionalty of the aforementioned presidential pardon of former President Richard M. Nixon? Secondly, has petitioner satisfied the test for standing as required (see Appendix C, exerpt from original suit filed in Southern District Court) in order to bring the suit?

ARGUMENT

Lower Court cannot have it both ways. It cannot, on the one hand, state that petitioner has no valid claim, and then on the other, proceed to address the merits of the controversy. And is it not a fair question for petitioner to ask - which controversy? There is no apparent disagreement among all the parties, petitioner, defendent, and the lower Court that the two issues are not connected. And as has been previously stated, the matter concerning the taxes is a moot point. Therefore, by what authority can lower Court without either addressing the issues of jurisdiction and standing enter into the fray concerning the presidential pardon? The answer is - it cannot.

It is a well established judicial axiom that the question of jurisdiction precedes any inquiry into the merits. One need look no further than Oregon v. Hitchcock, Or. 1906, 26 S. Ct. 568, 202 U. S. 60, 50 L. Ed. 935, to establish that fact. Additionally, while it involved a matter concerning an appeal from a three judge court, this Court has addressed the matter of correcting a lower Court where the lower court lacked jurisdiction and proceeded to act in the matter in U. S. v. Carrick, Ill. 1936, 56 S. Ct. 829, 298 U. S. 435, 80 L. Ed. 1263, wherein U. S. District Court lacked jurisdiction in a suit to enjoin prosecution for violation of stockyard rates established by the Secretary of Agriculture, U. S. Supreme Court ruled that it had jurisdiction of appeal for the purpose of correcting error of lower court in entertaining suit, although not of merits of controversy.

Therefore, as in U. S. v. Carrick, petitioner requests this Court to nullify lower Court's Memorandum Order because lower Court had no duly constituted authority to issue it.

Now comes the real issue before the court: The matter to be decided then falls into the category of matters of large public interest and the interested bystander. Recent case law as enumerated in petitioner's test for standing (see Appendix C) suggests this is still an open issue with few firm guidelines to steer by. And petitioner does recognize that the Courts have been reluctant to become involved in such issues. On the other hand, petitioner poses the question, does a

society purportedly founded on the premise of a rule of law designed to safeguard the rights of the individual vis-a-vis the majority have the right to circumvent that rule of law and then proceed on as if it had not happened? Petitioner respectfully suggests that the answer is obviously - No! History solved the problem of how one's guilt was to be determined long ago. Out of the political upheavals of sixteenth and seventeenth century English history came the solution. One of the byproducts of the English Glorious Revolution of 1688 was the creation of a Bill of Rights which a century later the creators of the United States Constitution were forced to accept. Inherent to that Constitution and its accompanying Bill of Rights is what is and what is not permitted, by due process of law, as to how one is held accountable for a capital, or otherwise infamous crime. The absence of trial, the use of self-incriminating evidence, and the use of Special Prosecutors are prohibited. Additionally, the President of the United States does not have unlimited power to pardon.

The paramount issue then is but one, that is - does this Court possess the necessary authority to create jurisdiction and to grant standing to the case at issue to contest the granting of the presidential pardon to Richard M. Nixon in 1975? Petitioner suggests that there are two answers to the question posed.

1. By the independent authority emanating from the 1803 decision commonly known as Marbury v. Madison, this Court does have all the constitutional authority

necessary to authorize the hearing of this case.

2. Acknowledging the many difficulties, precedences, and possible deficiencies, most notably the departure from the well established practice of the courts working under the supervision of the Congress, might an alternative solution for the lack of a jurisdictional statute be proposed? While petitioner knows of no precedence for the action suggested, might it be possible for this Court to simply refer the matter to the Congress of the United States with a request to furnish the enabling statute for the purpose of reviewing the constitutionality of the pardon of former President Richard M. Nixon? This presupposes that this Court is inclined to look favorably upon petitioner's test for standing as contained here-in, without which there would be no need for said jurisdictional statute.

CONCLUSION

For the foregoing reasons and others that may be apparent to the Court, petitioner, Thomas O. Williams, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Thomas O. Williams

Dated: May 18, 1982

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-2101

(UNPUBLISHED)

Thomas O. Williams, Appellant

v.

United States of America,
Mr. G. William Miller
Secretary of the Treasury and
Mr. P. Blair Evans,
District Director
Internal Revenue Service,
Appellees.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge.

Submitted: December 31,1981 Decided: February 22, 1982

Before HAYNSWORTH, Senior Circuit Judge, BUTZNER and RUSSELL, Circuit Judges

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(Thomas O. Williams, Appellant, Pro Se. Wayne A. Rich and Marye Wright, United States Attorney's Office, for the Appellees.)

PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from the court's order denying injunctive and declaratory relief is without merit. Because the dispositive issues recently have been decidided authoritatively, we dispense with oral argument and affirm the judgement below on the reasoning of the district court.* Williams v. United States, C/A No. 80-2249 (S.D.W. Va., Sept. 23, 1981).

AFFIRMED.

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* We deny appellant's motion to appoint legal assistance.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

THOMAS O. WILLIAMS,

Plaintiff

v. Civil Action
No. 80-2249

UNITED STATES OF AMERICA,
Mr. G. William Miller,
Secretatary of the Treasury;
and Mr. P. Blair Evans,
District Director, Internal
Revenue Service,

Defendants

MEMORANDUM ORDER

Plaintiff in this unusual action seeks to challenge the constitutionality of President Gerald Ford's pardon of Richard M. Nixon.[1] Plaintiff claims that he has a constitutional right to challenge the pardon, and further alleges that he has purposely refrained from paying his taxes (which he admittedly owes) in order to create jurisdiction and standing. The defendants

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[1] It is unclear whether plaintiff's desire is to vindicate or excoriate Mr. Nixon.

move to dismiss for lack of jurisdiction, for failure to state a claim upon which relief can be granted, and because plaintiff lacks standing.

The pardoning power of the President is created by Article II, Section 2, clause 1 of the United States Constitution, which grants the President the "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."[2] This grant of power was derived by the Founding Fathers from the authority of the English Crown to alter and reduce punishments; limitations on the pardoning power, if any, arise only out of the Constitution itself. Schick v. Reed, 419 U. S. 256 (1974).

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[2] The impeachment exception does not apply. President Ford's pardon of Mr. Nixon did not affect the Congress' impeachment proceedings. Rather, it prevented any criminal prosecutions of Mr. Nixon by granting "a full, free, and absolute pardon unto Richard Nixon for all offences against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974." Presidential pardon, 29 F. R. 32601; [1974] U. S. Code Cong. & Ad. News 8214.

A pardon may be granted at any time after the commission of an act which might give rise to criminal liability, regardless of whether formal legal proceedings have been iniated. As Mr. Justice Field wrote over one hundred years ago,

> The power thus conferred it is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgement. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The beneign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.
>
> .....If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; ....

Ex parte Garland, 4 Wall. (71 U. S.) 333, 381, (1866). President Ford's pardon of Richard Nixon was therefore well within his powers as President, and unquestionably constitutional. Murphy v. Ford, 390 F. Supp. 1372 (W.D. Mich. 1974).

Thus, plaintiff's complaint must be dismissed for failure to state a claim upon which relief can be granted, and a ruling on the questions of standing and jurisdiction is unnecessary.

Accordingly, it is hereby ORDERED that defenant's motion to dismiss for failure to state a claim be, and it hereby is, granted.

There being nothing further for determination in this case, it is ORDERED that this civil action be stricken from the docket of this court.

The Clerk is directed to forward certified copies of this order to all counsel of record herein and to the plaintiff.

DATED: September 23, 1981

s/ John T. Copenhaver, Jr.
JOHN T. COPENHAVER, JR.
United States District Judge

APPENDIX B-4

APPENDIX C

JUSTICIABILITY AND STANDING

While the exercise of plaintiff's Sixth Amendment constitutional right is an inalienable one, it is but the portal entrance to the Courts. Once inside there is a not insurmountable, but very real barrier commonly known as the doctrine of justiciability. This doctrine is a complex of rules by which it is determined whether federal courts can hear cases under Article III of the Constitution. And while there are cases we can look to for guidance, at the present time there would appear to be no hard and fast rules on the subject. As recent as 1970, the Supreme Court has said, "Generalizations about standing to sue are largely worthless as such." (Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 151 (1970).

Therefore, the law of standing as it relates to such public law questions as determinations of constitutionality and review of administrative or other governmental actions, as the Supreme Court has ruled, is a "complicated specialty of federal jurisdiction, the solution of whose problems is in any event more or less

determined by the specific circumstances of individual situations." (U.S. ex rel. Chapman v. Federal Power Commission, 1953, 345 U.S 153).

As defendant to this instant action has pointed out in its Motion to Dismiss, the issue is "whether the plaintiff has made out a 'case by controversy' between himself and the defendant within the meaning of Article III"; and, "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise (of) the court's remedial powers in his behalf."; quoted in part from, Warth v. Seldin, 422 U. S. 490, 498 (1975).

Thus the test for justiciability and standing would appear to be one of exclusiveness, linkage and specificity. That is - what is there to distinguish the plaintiff from all other members of the public at large, thereby enabling him to invoke the powers of the Court with respect to the constitutional infringement alleged? The two best known Supreme Court decisions on standing are, Frothingham v. Melon, 262 U. S. 447 (1923); and, Flast v. Cohen, 392 U.S. 83 (1968), already previously cited by defendant. While the in-

stant action does not deal specifically with the expenditure of public monies, nonetheless, we can look to the criteria for standing contained there-in for guidance.

Lastly, in conjunction with Data Processing etc. v. Camp, previously cited, a twopart test for standing was announced that may also prove helpful to the instant action: that is, standing exists if "the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise," (90 S. Ct. at 829, 397 U.S. at 152), and if "the interest sought to be protected by the complainant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question." (90 S. Ct. at 830, 397 U. S. 153).

Therefore, with respect to the instant action, and with reference to the cases previously cited, plaintiff proposes a four part test for standing as follows:

1. Is there a nexus between plaintiff's status and the federal relief he is seeking? That is, in his status as taxpayer, does plaintiff have a constitutional right to the use of the courts as he alleges?

2. Does the plaintiff have a logical nexus with the precise nature of the constitutional question to be tested? That is, does plaintiff have a logical connection with the pardon of former President Nixon?

3. Can the plaintiff demonstrate that he has in fact suffered injury, economic or otherwise, with respect to the constitutional infringement alleged?

4. Is the interest sought to be protected by the complainant arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question? That is - was there a constitutional violation concerning the pardon?

To that test we will now turn our attention.

1. As previously shown in the final two paragraphs under the section entitled Jurisdiction here-in, plaintiff has already established the required nexus between his status of taxpayer and the federal declaratory judgement relief he is seeking with regard to his constitutional right to the use of the courts.

2a) Plaintiff's nexus to the pardon issue, as required by item 2, preceeded the pardon itself. In 1973, at the outset of the Watergate incident, it is a matter of public record that plaintiff asserted that

"the nation is in the midst of a Constitutional crisis". (see exhibit "A" contained here-in). Subsequently, acting on that premise in 1974, plaintiff caused to happen a legal action, First National Bank and Trust Co. of Ithaca v. Thomas O. & Florence A. Williams, for the purpose of establishing the general claim that "America is loose and absolved from the Constitution." (see exhibit "B" contained herein, a portion of that action). That defense underscored here-in could not be maintained at that time because of lack of specificity, precedent and jurisdiction. However, it did lay the groundwork for the instant action, a particular test for the earlier general claim; it also resulted in the loss of plaintiff's home at 165 Townline Road, Ithaca, N. Y. The civil disorders in America during the past two decades, including the war in Vietnam, civil violence, economic upheavals, pardon without trial, etc. are all manifestations of a common problem, that is - the departure from first principles. In the instant action however, the only matter of particular concern is the Nixon pardon.

b) In an effort to further act on the matter of "loose and absolved from a rule of law", plaintiff declared as a candidate for president in 1976. (this is a matter of record with the Federal Elections Commission, Washington, D. C. and the subject of numerous news articles). While this is of no particular significance with respect to the pardon, it does serve to narrow plaintiff's degree of interest in the matter, from the general public at large to that common with the smaller class of some 200 plus other aspirants for the office at that time and other future presidents to come.

3. Concerning the matter of injury, economic or otherwise, as required by item 3, as previously indicated in 2. above, laying the groundwork for the instant action in the earlier case of 1974 cost plaintiff his home. A cursory perusal of plaintiff's income statements for the years since 1973, is but another indication of the economic losses sustained in preparation for this action. And while the dollar injuries thus far have been real and substantial, those do not begin to compare with the mental anguish and disruption to family and career that plaintiff has endured.

4. Was the pardon un-Constitutional? The answer to this query is but a matter of comparing the facts of what actually took place with the first principle assumptions as provided by United States Constitution, the Bill of Rights, and stated intentions of its framers, plus a determination of the age-old question of whether the intent or the letter of the law is to prevail. First, what are the explicit and implicit first premises upon which the American constitutional system was founded?

a) That the rights of the individual are to prevail - implicit to the Bill of Rights and stated explicitly throughout the Federalist Papers.

b) That had the President been found guilty of wrongdoing and removed from office in the manner prescribed, he was not to have been pardoned. Federalist Paper No. 69. "The power of the President, in respect to pardons, would extend to all cases, <u>except those of impeachment</u>.

c) Guilt is to be determined by trial - implicit to the Sixth Amendemnt.

d) Self incrimination as a legal device is specifically prohibited - explicit to the Fifth Amendment.

e) Implicit to the separation of powers principle inherent to the Constitution itself, the sole responsibility for trying the president rests with the Legislative branch, independent of the Judiciary.

f) An explicit constitutional prohibition concerning ex post facto, that is - changing the system of law after a crime is committed. U. S. Constitution, Article I, Section 9(3); "No ex post facto law shall be passed."

What are the facts? The President was pardoned and there was no trial; thus the implication of legal guilt without due process of law in the prescribed manner.

Under the U. S. Constitution, the matter of one president pardoning another constitutes a legal act. Because of the total separation of the powers of church and state so fundamentally inherent to the creation of America's governmental system, when one president pardons another, he is not granting moral absolution. Rather, he is acting in his capacity of Chief Magistrate of the land. Thus he is part and parcel to the legal system. Therefore, in the absence of a legal determination of "guilt", any subsequent pardon is

meaningless. And in the specific case concerning former President Nixon, because of the ex post facto infringement, it was un-Constitutional.

Exerpt from plaintiff's test for standing filed in Federal District Court for the Southern District of West Virginia.